IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

DANIELLE GEOFFRION and DARREN KASMIR,	§	
Plaintiffs,	§	
v.	§	**Case No. 4:14-cv-00350-RC-ALM**
NATIONSTAR MORTGAGE LLC,	§	
Defendant.	§	

DEFENDANT'S MOTION IN LIMINE

Defendant Nationstar Mortgage LLC (**Nationstar**), prior to the voir dire examination of the jury, files this motion in limine against plaintiff Danielle Geoffrion and Darren Kasmir (**plaintiffs**). In support thereof, Nationstar respectfully shows this Court the following:

I. BACKGROUND

Plaintiff Danielle Geoffrion signed a promissory note on June 30, 2004 payable to the order of Metrocities Mortgage, LLC in the original principal amount of $606,700.00 (**Note**). To secure repayment of the Note, plaintiffs executed a deed of trust (**Deed of Trust**) encumbering property located at 934 Dunsmuir Avenue, Los Angeles, California 90036 (**Property**). BAC Home Loans Servicing, LP (**BAC**) and Bank of America, N.A. (**BANA**) were mortgage servicers for the Loan before Nationstar. Plaintiffs defaulted on the Loan by failing to timely make their May 1, 2011 payment, and plaintiffs' May 17, 2011 payment was returned due to insufficient funds. As a result, the Loan became chronically past-due by one month. Plaintiffs then failed to make their regular monthly payments in September 2011, January 2012, April 2012, May 2012, June 2012, November 2012, January 2013, February 2013, and June 2013. In addition, several advances were made to pay property taxes. As a result, the total amount due on the Loan as of June 4, 2013 was $29,430.60.

Servicing of the Loan transferred from BANA to Nationstar effective July 1, 2013. Due to plaintiffs' default, the total amount owed on the Loan as of July 1, 2013 was $32,695.35. Following the loan transfer, Nationstar sent notice to plaintiffs via first-class mail, postage prepaid that qualified written requests under RESPA were to be sent to "Nationstar Mortgage, 350 Highland Drive, Lewisville, Texas 75067, Attn: Customer Relations Office."

Plaintiffs contacted Nationstar on November 13, 2013 to discuss payments made to BANA but returned to plaintiffs after the July 1, 2013 servicing transfer. Nationstar's representative informed plaintiffs, consistent with the payment records and prior letters from BANA, plaintiffs were ten (10) payments behind on the Loan. Plaintiffs disagreed, mistakenly believing Nationstar failed to account for certain payments made to BANA both before and after the service transfer. Despite this, plaintiff Darren Kasmir admitted he was the only one working at the time and he did not know why plaintiffs were so far behind.

Refusing to acknowledge the substantial default on the Loan was due to their missed payments, plaintiffs filed this lawsuit in state court on April 30, 2014 alleging claims for (**1**) RESPA violations, (**2**) breach of contract, and (**3**) an accounting. Nationstar removed the case to federal court and plaintiffs filed their live pleading alleging the same claims.

II. REQUESTED LIMINES

Nationstar moves this Court to instruct the plaintiffs, their counsel and any witnesses they may call on their behalf not to argue, prove or attempt to prove, refer to, mention, or allude to in the *voir dire* examination of the jury or at any time in any form or manner in the presence of the jury, either directly or indirectly, any of the following matters without first approaching the bench and informing the Court that they intend to make such a statement, ask such a question, or elicit such testimony, and proffering such statement, question, or testimony to be elicited to the

Court outside the hearing and presence of the jury and obtaining the Court's ruling on the admissibility thereof outside the hearing and presence of the jury:

1. Any reference to, attempt to argue or attempt to introduce evidence in support of an affirmative claim for relief, affirmative defense or damage theory that has not been timely or properly pleaded or disclosed in discovery. Such evidence is irrelevant, would be unduly prejudicial to defendant, and would create unnecessary confusion of the issues which may mislead the jury. The evidence is properly excluded under either Rules 401 or 403 of the Federal Rules of Evidence.

GRANTED: ______________ DENIED: ________________

MODIFIED: ____

SIGNED: ____

2. Any reference to, attempt to argue or attempt to introduce evidence, including testimony from fact and/or expert witnesses, that was not timely or properly disclosed in response to a written discovery request and/or court order.

GRANTED: ______________ DENIED: ________________ AGREED: __X_____

MODIFIED: ____

SIGNED: ____

3. Any reference to negotiations, offers or demands with respect to any attempted settlement, including evidence of conduct or statements made in compromise negotiations. This evidence is inadmissible pursuant to Rule 408 of the Federal Rules of Civil Procedure.

GRANTED: ______________ DENIED: ________________ AGREED: __X_____

MODIFIED: ____

SIGNED: ____

4. Any reference to discovery disputes that arose during the preparation of the case for trial, any position taken by any party with respect thereto, or to the Court's rulings thereon. This includes the assertion of any objection based on failure to disclose evidence in pre-trial discovery. Should the plaintiffs desire to urge any such objection, they shall request to approach the bench and urge such objection outside the hearing of the jury.

GRANTED: ______________ DENIED: ________________

MODIFIED: ____

SIGNED: ____

5. Any reference to, attempt to argue or attempt to introduce evidence of any statement or report of any person not then and there present in court to testify and to be cross-examined or otherwise suggest to the jury by argument or otherwise what would have been the testimony of any witness not actually called–this includes all witnesses whom counsel have not arranged to bring to trial in person or by deposition–or comment upon the failure of any party to call witnesses who are subject to subpoena and available to all parties in this cause or suggest to the jury by argument or otherwise what would have been the testimony of any witness not actually called.

GRANTED: ______________ DENIED: ________________ AGREED: __X____

MODIFIED: ____

SIGNED: ____

6. Any reference to, attempt to argue or attempt to introduce evidence of insurance of any kind. Whether any party to this action is covered by insurance or has received insurance benefits is entirely immaterial to any issue in this case and inadmissible under Rule 411 of the Federal Rules of Evidence.

GRANTED: ______________ **DENIED:** ________________ **AGREED:** __X____

MODIFIED: ____

SIGNED: ____

7. Any request or demand in the presence of the jury that opposing counsel produce any document or thing, or that opposing counsel or any party or witness exhibit, turn over or allow examination of the contents of any file or briefcase (except that a party may request to see a document being tendered to a witness or otherwise asked to be admitted into evidence or that a witness testifies that he/she has used previously to refresh his/her recollection).

GRANTED: ______________ **DENIED:** ________________ **AGREED:** __X____

MODIFIED: ____

SIGNED: ____

8. Any reference to, attempt to argue or attempt to introduce evidence about the contents of documents not then admitted in evidence, except to establish the predicate for admissibility or impeachment of a witness then on the witness stand.

GRANTED: ______________ **DENIED:** ________________

MODIFIED: ____

SIGNED: ____

9. Showing any documents, photographs or visual aids to the jury, or displaying same in such manner that the jury or any member thereof can see the same, unless and until the same has been tendered to opposing counsel, and has been admitted in evidence or approved for admission or use before the jury, either by the Court or by all counsel.

GRANTED: ______________ **DENIED:** ________________ **AGREED:** __X____

MODIFIED: ____

SIGNED: ____

10. Any request or demand in the presence of the jury for a stipulation to any fact, or that counsel admit or deny any fact.

GRANTED: ______________ DENIED: ________________ AGREED: __X____

MODIFIED: ____

SIGNED: ____

11. Any expression of any party's personal opinion regarding the credibility of any witness.

GRANTED: ______________ DENIED: ________________

MODIFIED: ____

SIGNED: ____

12. Any reference to, attempt to argue or attempt to introduce evidence of the relative size of defendant–in terms of assets, revenue or other measure–as compared to the plaintiffs, or any statements tending to suggest that the outcome should be based upon the party who will be affected the least. Any evidence or statement of this type is irrelevant and would be unduly prejudicial to defendant and create unnecessary confusion of the issues which may mislead the jury. Therefore, the evidence is properly excluded under either Rule 401 or 403 of the Federal Rules of Evidence.

GRANTED: ______________ DENIED: ________________

MODIFIED: ____

SIGNED: ____

13. Any argument or suggestion that an award of damages will not affect defendant or that defendant can afford to pay damages or, conversely, that a failure to award damages will cause the plaintiffs privation or financial hardship.

GRANTED: ______________ **DENIED:** ________________ **AGREED:** __X____

MODIFIED: ____

SIGNED: ____

14. Any argument or suggestion that the jurors should put themselves in the position of the plaintiffs or any other party or person.

GRANTED: ______________ **DENIED:** ________________ **AGREED:** __X____

MODIFIED: ____

SIGNED: ____

15. Any reference to, attempt to argue or attempt to introduce evidence or elicit testimony of legal opinions or related to legal issues in this case. Such opinions are the province of the Court, to be advised by counsel from the counsel table, not the witness stand, to charge the jury. In addition, a legal opinion from unqualified witnesses is not probative evidence.

GRANTED: ______________ **DENIED:** ________________

MODIFIED: ____

SIGNED: ____

16. Any reference to, attempt to argue or attempt to introduce evidence or elicit testimony about the amount of money any defendant paid to acquire an interest in the loan. This evidence is irrelevant and would be unduly prejudicial to defendant by creating unnecessary confusion of the issues which may mislead the jury. Therefore, the evidence is properly excluded under either Rule 401 or 403 of the Federal Rules of Evidence.

GRANTED: ______________ **DENIED:** ________________ **AGREED:** __X____

MODIFIED: ____

SIGNED: ____

17. Any reference to, attempt to argue or attempt to introduce evidence or elicit testimony that the attorneys' fees incurred by defendant in this case is evidence of the reasonableness or necessity of attorneys' fees incurred by the plaintiffs. Such evidence is patently irrelevant. *MCI Telecommunications Corp. v. Crowley*, 899 S.W.2d 399, 403-04 (Tex. App.–Fort Worth 1995, n.p.h.). Therefore, such evidence would be unduly prejudicial to defendant by creating unnecessary confusion of the issues which may mislead the jury. Therefore, the evidence is properly excluded under either Rule 401 or 403 of the Federal Rules of Evidence.

GRANTED: ______________ DENIED: ________________

MODIFIED: ____

SIGNED: ____

18. Any reference to, attempt to argue or attempt to introduce evidence or elicit testimony related to a "mortgage crisis" or "foreclosure crisis," alleged to have been contributed to by banks, mortgage companies or other financial institutions, in general, or by defendant, in particular, including, but not limited to, other legal proceedings, whether threatened, pending or concluded, including the settlements thereof, related to lending practices, securitization, servicing and/or foreclosure, except that the parties should be permitted to ask prospective jurors generally in *voir dire* if any such news reports will affect their ability to sit as jurors in this case. However, any further reference to these topics, as if they are applicable to the facts of this case when they are not, is irrelevant and would be unduly prejudicial to defendant by creating the impression the merits of this case should be decided based upon anything other than the actions of the defendant in this matter. The evidence is properly excluded under either Rule 401 or 403 of the Federal Rules of Evidence.

GRANTED: ______________ DENIED: ________________

MODIFIED: ____

SIGNED: ____

19. Any reference to, attempt to argue or attempt to introduce evidence or elicit testimony related to money allegedly paid to banks, mortgage companies or other financial institutions, in general, or to defendant, in particular, by any state or federal government under the Troubled Asset Relief Program (**TARP**) or other related program. Any reference to these topics, as if they are applicable to the facts of this case when they are not, is irrelevant and would be unduly prejudicial to defendant by creating the impression the merits of this case should be decided based upon anything other than the actions of the defendant in this matter. The evidence is properly excluded under either Rule 401 or 403 of the Federal Rules of Evidence.

GRANTED: ______________ DENIED: ________________ AGREED: __X_____

MODIFIED: ____

SIGNED: ____

20. Any reference to, attempt to argue or attempt to introduce evidence of defendant's alleged obligations under any state or federal loan modification program such as TARP, the Making Home Affordable Program (**MHA**), or the Home Affordable Modification Program (**HAMP**), as well as any attempt by the plaintiffs to testify, reference, identify, or question any witness regarding his alleged application for any relief offered under any such programs. This evidence is irrelevant and not probative of any of the plaintiffs' claims, and would cause unnecessary confusion of the issues which may mislead the jury.

GRANTED: ______________ DENIED: ________________ AGREED: __X_____

MODIFIED: ____

SIGNED: ____

21. That this motion has been filed, or any ruling by this court in response to this motion, suggesting or inferring to the jury that defendant moved to prohibit or limit the evidence or arguments, or that the court has excluded or limited the evidence or arguments, or that because a motion in limine has been filed there are certain facts, evidence or arguments which cannot be presented to the jury.

GRANTED: ______________ **DENIED:** ________________ **AGREED:** __X____

MODIFIED: ____

SIGNED: ____

22. Defendant further request the Court instruct the Plaintiffs not to make any statements to, or in the hearing and presence of, the jury that would inform the jury of or allude to any of the foregoing matters until such testimony or statement has first been presented to the Court outside the hearing and presence of the jury and the Court's ruling has been obtained thereon; and that the Plaintiffs be instructed to **inform all witnesses** called by them not to make any statement to, or in the hearing and presence of, the jury that would inform the jury of or allude to any of the foregoing matters until such testimony or statement has first been presented to the Court outside the hearing and presence of the jury and the Court's ruling has been obtained thereon.

GRANTED: ______________ **DENIED:** ________________

MODIFIED: ____

SIGNED: ____

23. Any reference to or attempt to introduce evidence by plaintiffs or their counsel of any fact that was the subject of a question prosed to plaintiffs at their depositions and that plaintiffs refused to answer.

GRANTED: ______________ DENIED: ________________

MODIFIED: ____

SIGNED: ____

24. Any reference to or attempt to introduce evidence from a fact witntess not designed by first and last name or otherwise in such a manner to identify the witness specifically prior to trial.

GRANTED: ______________ DENIED: ________________

MODIFIED: ____

SIGNED: ____

III. PRAYER

WHEREFORE, premises considered, Nationstar prays the Court grant this motion in all things and enter an order suppressing all testimony, statements, questions, or evidence of the character enumerated above in the presence of the jury panel or the jury, until such time as questions, statements, and evidence have first been presented to the Court outside the hearing and presence of the jury panel and the Court has made its ruling on the admissibility thereof, and further that **all witnesses be advised** of the Court's order **out of the presence of the jury** and prior to testifying.

Date: July 30, 2015

Respectfully submitted,

/s/ Walter McInnis

C. Charles Townsend; SBN: 24028053
Walter McInnis; SBN: 24046394
Andrew D. Thomas, SBN: 24060714
AKERMAN LLP
2001 Ross Avenue, Suite 2550
Dallas, Texas 75201
Telephone: 214.720.4300
Facsimile: 214.981.9339
charles.townsend@akerman.com
walter.mcinnis@akerman.com
andrew.thomas@akerman.com

ATTORNEYS FOR DEFENDANT NATIONSTAR MORTGAGE LLC

CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2015, a true and correct copy of the foregoing was served via the court's electronic filing system as follows:

Jarrett L. Ellzey, Jr.
W. Craft Hughes
HUGHES ELLZEY, LLP
Galleria Tower I
2700 Post Oak Blvd., Ste. 1120
Houston, TX 77056
jarrett@crafthugheslaw.com
craft@hughesellzey.com
Attorneys for Plaintiffs

/s/ Walter McInnis
Walter McInnis